

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

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|-------------------------------|---|-------------------------------|
| FRANCISCO ZAVALA, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Civil Action |
| |) | No. 08-3104-CV-S-RED-H |
| UNITED STATES ATTORNEY |) | |
| GENERAL, et al., |) | |
| |) | |
| Respondent. |) | |

ORDER AND JUDGMENT

Pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri, the petition herein for a writ of habeas corpus was referred to the United States Magistrate for preliminary review under the provisions of 28 U.S.C. § 636(b).

The United States Magistrate has completed his preliminary review of the petition for a writ of habeas corpus and has submitted to the undersigned a report and recommendation that petitioner be denied leave to proceed in forma pauperis, and that the petition be dismissed without prejudice.

Petitioner has filed exceptions to the report and recommendation in which he continues to assert that the Bureau of Prisons [“BOP”] has been deliberately indifferent to his serious medical needs by denying him a kidney transplant.

Having fully reviewed the record de novo, this Court agrees with the Magistrate that the petition should be dismissed because petitioner has failed to state a constitutional violation. The record indicates that the BOP evaluated petitioner for a kidney transplant. His name was submitted from the Medical Center to be considered for kidney transplant. He was rejected as a suitable candidate by the Transplant Advisory Group “primarily due to his long history of drug abuse, and

because he has demonstrated no commitment to abstinence.” [Report to the Court, April 27, 2009]. Although petitioner continues to challenge this decision, he has failed to establish that the hemodialysis treatment he has received at the Medical Center demonstrates a deliberate indifference to his serious medical needs. While he states in his exceptions that he suffers a rash, which establishes that he has not been successfully maintained on hemodialysis and that continuing dialysis treatment is contraindicated, there is no medical evidence in the record to support this contention. A review of the record indicates, moreover, that medical staff have treated petitioner’s problems with a rash in the past. It should be noted, additionally, that this order is without prejudice to petitioner’s right to petition for habeas corpus relief, should his medical condition deteriorate and should he be able to establish that continued hemodialysis does constitute deliberate indifference to his serious medical needs.

Based on the file and records in this case, it is concluded that the findings of fact, conclusions of law, and proposed actions of the Magistrate are correct and should be approved. It is therefore

ORDERED that petitioner's exceptions filed herein be, and they are hereby, considered and overruled. It is further

ORDERED that petitioner be, and he is hereby, denied leave to proceed in forma pauperis. It is further

ADJUDGED that the petition herein for a writ of habeas corpus be, and it is hereby, dismissed without prejudice.

/s/ Richard E. Dorr
Richard E. Dorr
United States District Judge

Date: January 21, 2010